



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS  
JOHN CORNYN

November 21, 2000

Mr. John Bradley  
First Assistant District Attorney  
Williamson County  
405 M.L.K., No. 1  
Georgetown, Texas 78626

OR2000-4478

Dear Mr. Bradley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 141176.

The Williamson County District Attorney's Office (the "district attorney") received a request for the prosecution files pertaining to four particular criminal defendants. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we address your statement that the requested information includes records relating to grand jury proceedings. Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *See* ORD 513 at 3. Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *Id.* You inform us that a portion of the requested information was obtained by a grand jury. To the extent that such information is in the custody of the district attorney as agent of the grand jury, that information is in the grand jury's constructive possession and therefore is not subject to disclosure under the Act.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 protects information that is encompassed by statutory confidentiality provisions. You assert that a responsive presentence investigation report is confidential under section 9(j) of article 42.12 of the Code of Criminal Procedure. Section 9(j) of article 42.12 provides that a report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only to certain specified persons and under specified circumstances. It does not appear to this office that any of the exceptions to confidentiality under section 9(j) is applicable in this instance. We therefore conclude that the submitted presentence investigation report is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure.

You also indicate that the submitted information includes juvenile law enforcement records. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to juvenile conduct that occurred before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). We have marked law enforcement records that concern juvenile conduct that occurred prior to January 1, 1996. Those records are confidential and must be withheld under section 552.101 of the Government Code in conjunction with the former section 51.14(d) of the Family Code.

You also claim that information prepared by the prosecutor is excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the "law enforcement" exception, provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

.. (3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(3). A governmental body that raises an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why the release of that information would interfere with law enforcement. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the records in question represent "information that was prepared by the prosecutor in anticipation of or in the course of criminal litigation and reflects the mental impressions or legal reasoning of the prosecutor." Based on your representations and our review of the information in question, we concluded that it is excepted from public disclosure under section 552.108(a)(3).

In summary, requested information that is in the custody of the district attorney as agent of the grand jury is not subject to disclosure under the Act. The presentence investigation report is confidential under section 552.101 of the Government Code in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure. The juvenile law enforcement records involving conduct that occurred before January 1, 1996 are confidential under section 552.101 in conjunction with the former section 51.14(d) of the Family Code. The rest of the submitted information is excepted from disclosure under section 552.108(a)(3). As we are able to make these determinations, we need not consider your claim under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body


fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/er

Ref: ID# 141176

Encl: Submitted documents

cc: Mr. Randy Schaffer  
Randy Schaffer, P.C.  
1301 McKinney, Suite 3100  
Houston, Texas 77010  
(w/o enclosures)